IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Chhail Singh & Ors. vs. The State of Rajasthan.

D.B.Cri. Appeal No.901/2003

Under Section 374 (2) Cr.P.C. against the judgment dated 31.07.2003 passed by the Sessions Judge, Jaisalmer, in Sessions Case No.47/2000.

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Date of Judgment: 22nd August, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.L.D.Khatri for the appellant.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by 7 accused appellants, against the decision of District and Sessions Judge, Jaisalmer in Sessions case No.47/2000 dated 31.07.03.

11 persons were put to trial, including the seven

accused appellants, and four acquitted accused, in a case which started with the lodging of the first information report at Police Station Phalsund on 29.09.00 at 01.15 AM by one Chouth Singh. In the written report, Chouth Singh reported to the police that on 28.09.00 at about 10.00 PM , while he was at his residence , he heard shouts from a distance. When he reached there, he saw that on the boundary of the field, his brother Sujan Singh , who was returning from the dhani of his uncle Narpat Singh , was encircled by the 11 accused persons , namely Pep Singh, Gemar Singh, Bhanwar Singh, Sawai Singh, Shaitan Singh, Ugam Singh, Narain Singh, Bal Singh, Chhotu Singh, Indra Singh, and Chhail Singh and they were beating him. He informed that accused Gemar Singh and Pep Singh had sword and rest of them had clubs and they were beating Sujan Singh. By their beating Sujan Singh had fallen down. They had also caused injuries to the first informant. He got unconscious. After recovering consciousness, he had come to lodge the report.

On the basis of said report, FIR No. 51/2000 was registered. Investigation was conducted. After investigation, the police filed the charge sheet. The committal court committed the case to the court of Sessions, where trial was held and where accused Gemar Singh was charged under Sections 148, 302, 324, 325/149,

323/149 and Section 307 IPC and others were charged under section 148, 302/149, 324/34, 325/149, 323 and 307 IPC. Accused denied the charges and claimed trial.

According to the trial court, the most important witness was PW/5 Chouth Singh, an injured witness. There were two more eye witnesses, PW/8 Nakhat Singh and PW/9 Derawar Singh . The trial court ultimately came to the conclusion that out of the alleged accused persons, four were not found to be present on the scene of occurrence , namely Pep Singh, Narain Singh, Indra Singh and Bagh Singh and they were acquitted of the charges levelled against them. However, the other accused persons were convicted and sentenced as under:-

Accused appellant Gemar Singh-

U/s 148 IPC - Two years R.I. and a fine or Rs.200/-. In default of payment of fine to further undergo two months R.I. U/s 302 IPC – Life imprisonment and a fine of Rs.2000/- . In default of payment of fine to furthr undergo six months' R.I. U/s 324 IPC – 2 years' R.I. and a fine of Rs.200/- . In default of payment of fine to further undergo two months' R.I. U/s 323/149 IPC – six months ' R.I. U/s 325/149 IPC- 3 years' R.I. and a fine of Rs.300. In default of payment of fine to further undergo three months' R.I.

Accused appellants Chhail Singh, Shaitan Singh Chhotu Singh, Ugam Singh, Bhnwar Singh and Sawai Singh-

U/s 148 IPC- 2 years' R.I. and a fine of Rs.200/-. In default of payment of fine to further undergo two months' R.I. U/s 302/149 IPC – Life imprisonment and a fine of Rs.2000/-. In default of payment of fine to further undergo six months' R.I. U/s 324/149 IPC- 2 years' R.I. And a fine of Rs.200/- . In default of payment of fine to further undergo two months' R.I. U/s 325/149 IPC – 3 years' R.I. And a fine of Rs.300/-. In default of payment of fine to further undergo three months' R.I. U/s 323/149 IPC – six months' R.I.

The best case of the prosecution has been narrated by PW/5 Chouth Singh , an injured eye witness. The learned counsel for the appellant criticised the statement of PW/5 Chouth Singh by saying that, in his statement, he has said that while Sujan Singh was returning from the house of his uncle, at that time his way was obstructed by the accused and the deceased was belaboured. When he saw the accused beating, he ran towards them and at that time he saw accused Gemar Singh with a sword which he was bringing from his house. Gemar Singh came towards the accused and at that time the witnesses shouted not to inflict injury but Gemar Singh inflicted an injury on the head of Sujan Singh, deceased. He was at a distance of about 2 paces. The accused Gemar Singh gave a second blow , by that the blade of the sword got separated from the handle. The handle remained in the hand of Gemar Singh and the blade hit his forehead

and the blade fell down which was taken by the witness under his feet and the other accused persons started giving lathi injuries on him . One lathi hit was caused on the head and he fell down due to injuries and became unconscious. This story of the witness PW/5 Chouth Singh clearly establish that at the time when the other accused persons were belabouring the deceased Sujan Singh, Gemar Singh was not having the sword. It was subsequently that Gemar Singh came with the sword and inflicted injuries on the person of the deceased.

From the aforesaid sequence of events, the learned counsel for the appellants wants to deduce that it would be wrong to assume that the other accused persons, along with Gemar Singh, had a common object of killing the deceased, because while the belabouring was continuing, the sword was not with the accused Gemar Singh. According to the best version of the prosecution, as contained in the statement of PW/5 Chouth Singh, he saw Gemar Singh coming out of his house with the sword and in that sequence the other accused persons cannot be said to be sharing what was going in the mind of the accused. Because when the fight broke out the sword was not with Gemar Singh. It is the injury of the sword which was responsible for the death of the deceased. At best it can

be said that the other accused persons had some common object of causing injuries to the deceased, of the nature they have caused , apart from the injury by sword. The injury by sword has been caused by Gemar Singh , after bringing the sword from his house.

Thus, the implication of the accused persons with the aid of Section 149 IPC along with the accused Gemar Singh, is not a legally permissible conclusion, which the trial court has drawn. According to the learned counsel, if the implication of Section 149 IPC is taken out, for the implicity of the other accused persons, then their conviction under section 302/149 IPC, cannot be sustained. They have not been convicted under section 307 IPC. The other convictions being under Sections 324 , 325/149, 323/149 IPC, even if maintained, then the period already under gone by these accused persons, would be sufficient to meet the ends of justice, because only simple injuries are said to have been caused to the deceased by these accused and there is only minimal grievous hurts sustained by PW/5 Chouth Singh on his person.

The accused were arrested in September 2000 and were released on bail on 18.01.01. Nearly three months they have remained behind the bars. They are suffering the prosecution since

September, 2000 and, therefore, the learned counsel for the appellant prayed that they may be let out on the sentence already undergone and the offence under Section 302IPC, as has been made out against accused appellant Gemar Singh, the injury caused by him being responsible for the death of the deceased, he can be punished for the offences charged.

Per contra, the learned Public Prosecutor, submitted that it was not correct to say that the accused had not shared the common object. They wanted to kill the deceased and in that view of the matter, the injuries were inflicted after arriving at a common object, for which the trial court has convicted the accused persons in right perspective.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record.

If the evidence of PW/5 Chouth Singh is critically examined, then it is established that all the accused persons were belabouring the deceased and at that time Gemar Singh was not having the sword which was brought by Gemar Singh, when the

witness was proceeding towards the scene of crime. That being the position, there is substance in the argument raised by the learned counsel for the appellant that it cannot be said that the common object of the unlawful assembly, was to kill the deceased. At best, they shared the the common intention to cause injuries. The statement of PW/8 Nakhat Singh and PW.9 Derawar Singh, given in their examination-in chief, also does not go beyond the statement of PW/5 Chouth Singh and the statement of these two witnesses in police, further demolished the case of the prosecution that the accused had shared the common object of killing the deceased.

In police statement, Ex.D/2 and Ex.D/3, these two witnesses have not even stated that they had seen Gemar Singh inflicting injury. In fact he was seen with the handle of the sword. Therefore, these two witnesses do not corroborate the statement of PW/5 Chouth Singh. PW/5Chouth Singh, if taken his own version, then Gemar Singh came on the place of occurrence from his house armed with sword and therefore, the other accused persons having the knowledge of the accused to kill the deceased, cannot be believed and in that light, the prosecution case deserves to be segregated of the two set of accused persons, one Gemar Singh and the others, six accused persons. Gemar Singh has been convicted under section 302

IPC. Because his injury has been responsible for causing the death of the deceased, which can be seen from the nature of injuries sustained by the deceased:-

Ex.P/48.

"Details of injuries :

Skull bone fracture of occipital bone.

Incised wound of 3" (Three inches) x 5mm. size on posterior part of skull (On occipital bone).

Extensive laceration of brain i.e. Intracranial haemorrhage present."

Cause of death :

Intracranial haemorrhage resulting due to occipital bone fracture and extensive laceration of brain i.e. Occipital bone. "

The injuries responsible for the death of deceased being the injuries caused by the sharp edged weapon, the liability of killing the deceased can safely be fastened on the head of accused Gemar Singh and the other accused persons cannot be attributed common object to kill the deceased. The other accused persons having not caused injuries to the deceased, as per the post mortem report, their implication under section 302/149 IPC is, therefore, held wrongly arrived at by the trial court. Their conviction under section 302/149 IPC is set aside. As regards the other offences under sections 148,

324/149, 325/149 and 323/149 IPC are concerned, since the accused appellants have caused injuries to PW/5 Chouth Singh, in which he sustained grievous hurt, therefore, their convictions under these sections is , however, maintained. They are suffering the prosecution from the year 2000. They have remained behind the bars for more than three months and the period already undergone will be sufficient to meet the ends of justice.

In the result, the appeal is partly allowed. The appeal of accused appellant Gemar Singh is dismissed and the appeal of the other accused persons, Chhail Singh, Shaitan Singh, Chhotu Singh, Ugam Singh , Bhanwar Singh and Sawai Singh is allowed , so far as it relates to offence under Section 302/149 IPC. The conviction of the other accused persons under sections 148, 324/149, 325/149, 325/149 is maintained and it is considered that the period already undergone by these accused persons will meet the ends of justice. They are on bail , they need not surrender. Their bail bonds are cancelled.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

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